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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

20 NATHANIEL WILSON, et al.,
21 Plaintiffs,
22 vs.
23 THE MILL GROUP INC., et al.,
24 Defendants.

25 **CASE NO.: 2:12-CV-10214-SVW-MAN**
26
DECLARATION ARTHUR GREBOW
IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTIONS FOR (1)
CLASS CERTIFICATION AND (2)
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
[Part 1 of 3 – Pages 1 to 47]

27
28
Date: September 9, 2013
Time: 1:30 p.m.
Place: Courtroom 6

DECLARATION OF ARTHUR GREBOW

I, ARTHUR GREBOW, hereby declare that:¹

1. I am a partner in the firm of Grebow & Rubin, LLP (“GR”), which is located in Los Angeles, California. The Firm, along with the law firms of Schwartz, Steinsapir, Dohrmann & Sommers, LLP (“SSDS”) and Feinstein Dolye Payne & Kravec, LLC (“FDPK”), represent the Plaintiffs Nathaniel Wilson, Richard Servello, David Shwartz and Tim Hoffman (“Class Representative” or “Plaintiffs”) in this action.

10 2. I submit this declaration in support of Plaintiffs' (combined)
11 Unopposed Motions for (1) Class Certification and (2) Preliminary Approval of
12 Class Action Settlement ("Preliminary Approval Motions").

13 3. As Plaintiffs note in their Preliminary Approval Motions, they have
14 entered into a proposed Amended Settlement Agreement, as to which they are
15 seeking preliminary and final approval pursuant to the Federal Rules of Civil
16 Procedure (“FRCP”) Rule 23. Under the conditions stated in Section 1 of the
17 Amended Settlement Agreement (filed with the Preliminary Approval Motions),
18 Defendants do not oppose Plaintiffs’ Motion for Class Certification or Preliminary
19 Approval of the Settlement. A copy of the Proposed Amended Settlement
20 Agreement is attached as Exhibit “A”.

21 4. Pursuant to Section 2 of the proposed Amended Settlement
22 Agreement, Class Representatives seek class certification of a Settlement Class
23 defined as follows:

25 ¹ This declaration is identical to the one I previously submitted, dated June 29, 2013, except for
26 changes in paragraphs 10, 12 (b) and 12(f) primarily relating to the execution of the Amended
27 Settlement Agreement and the reduction in attorney's fees requested. Exhibit C attached hereto,
28 proposed Class Notice, has been correspondingly changed as well.

1 All individuals who at any time on or after
 2 September 14, 2009 and up to and including March 14,
 3 2013 worked or performed and completed services in
 4 California for The Mill in the pre-production, production
 5 or post-production processes of motion pictures,
 6 television programs advertising, game art or other visual
 7 content, as to whom Yurcor performed services for The
 8 Mill and/or the respective individual (for example,
 9 payroll processing services, "Employer of Record"
 10 services or "Yurcor's third party payroll services
 11 program").

12 5. Pursuant to Section 2(C)(1)(c) and Exhibit 2 of the proposed
 13 Amended Settlement Agreement all the persons Plaintiffs propose to be included in
 14 the class ("Class Members") are identified, and they number 205.

15

16 BACKGROUND OF THE LITIGATION AND
 17 PROPOSED SETTLEMENT

18 6. The Defendants in this class action are The Mill Group, Inc., dba The
 19 Mill ("The Mill") and The Churchill Benefit Corporation, dba Yurcor ("Yurcor").
 20 Class Members, as employees, sought to recover wages and penalties under the
 21 California Labor Code against their joint employers, The Mill and Yurcor, for
 22 statutory violations, as well as damages for conversion and injunctive relief for
 23 violation of Business and Professions Code §17200, et seq.

24 7. On September 14, 2012, Plaintiffs filed the action in Los Angeles
 25 County Superior Court as Case No. BC492168 alleging that Defendants The Mill
 26 and Yurcor, as joint employers, unlawfully deducted from Class Members' wages
 27 *employer* (as opposed to employee) required FICA, FUTA, SUI taxes and Workers

1 Compensation deductions and/or improperly misclassified Class Members as
 2 independent contractors for which Defendants would be subject to additional
 3 penalties.

4 On November 29, 2012, Defendants The Mill and Yurcor removed such
 5 action to the United States District Court, Central District of California. On
 6 February 13, 2013, Plaintiffs filed a Second Amended Class Action Complaint in
 7 this Court. The Plaintiffs Second Amended Complaint added claims under
 8 California's Labor Code Private Attorneys General Act of 2004, California Labor
 9 Code §2698-2699, modified the description of the Class, and named an additional
 10 Plaintiff, Tim Hoffman.

11 8. The allegations in Plaintiffs Second Amended Complaint included the
 12 following:

13 (a) The Mill is a production company, located in Los Angeles,
 14 developing and creating visual effects for the broadcasting of commercial
 15 advertisements, film, and television. After The Mill identified, interviewed,
 16 negotiated “pay” (wage) rates with, and effectively entered into oral employment
 17 agreements with Class Members, The Mill advised Class Members to contact
 18 Yurcor to complete the paperwork. The Mill intentionally omitted discussion with
 19 Class Members about whether they were engaged by The Mill as employees or
 20 independent contractors. The Mill, by its actions and representations, inaccurately
 21 led Class Members to believe they were hired as employees and that Yurcor was
 22 The Mill’s payroll service company, i.e., the company charged with nothing more
 23 than keeping time records and issuing customary payroll checks with the normal
 24 employee deductions (e.g., ADP).

25 (b) Class Members generally performed and completed their artist
 26 services for The Mill in a matter of weeks and were usually not paid by Yurcor
 27 until after their employment was completed (as no biweekly check was issued until
 28

1 more than one-month after employment began). The Mill exercised total control
2 over the manner in which the work was to be performed by Class Members,
3 including setting their wages (aka pay rates), hours and other working terms and
4 conditions. The Mill required employees to work at its Los Angeles facility from 9
5 am to 7 pm Monday through Friday, and weekends if necessary; The Mill made
6 assignments and supervised them; and Class Members were required to use
7 company tools, materials and equipment.

8 (c) Yurcor is a self-described “Employer of Record” that currently states
9 on its website:

10 **Third-party payroll and benefits for consultants**

11 *[such as Plaintiff Class Members]*

12 Whether you are self-employed, incorporated, or
13 work thorough staffing supplier, Yurcor Employer of
14 Record combines the freedom to choose your own
15 assignments with the security of back office support and
16 portable health benefits offered by being part of an
17 established corporation.

18 As a Yurcor consultant, you run your own business
19 unit as a Yurcor W-2 employee. You choose your
20 clients, do the work, enter your time and expenses online,
21 and let Yurcor take care of all the rest. Working with
22 Yurcor eliminates the reluctance of many businesses to
23 hire 1099 consultants so you can actually win more
24 business.

25 Yurcor executes contracts, gets time and expenses approved,
26 bills clients, does collections, deposits receivable, and pays payroll
27 taxes so you do not have to.

Consultants payroll and benefits service

Yurcor's Employer of Record service is designed to simplify the key processes of delivering consulting services and offer employee benefits in a manner that is compliant with tax and labor regulations.

6 (d) Yurcor provided its services for Class Members to The Mill pursuant
7 to a contract between the two Defendants. In its relationship with The Mill and
8 Class Members, Yurcor referred to itself as the Class Members' "Employer of
9 Record" and to the Class Members as its "employees." Yurcor acted in various
10 ways as Class Members' ostensible employer, e.g., by issuing to Class Members in
11 its own name W-4s and I-9s for completion, and providing them with W-2s (but
12 not 1099s) at year-end. Yurcor calls Class Members "consultants" and
13 "employees" but treats them as independent contractors.

14 (e) Yurcor exercised control, with the agreement or acquiescence of The
15 Mill, over the amounts actually paid to Class Members for their services. These
16 amounts were not in accordance with the agreements made by The Mill and Class
17 Members individually: In addition to taking standard employer payroll deductions
18 from Class Members' paychecks for their work at The Mill, Yurcor – without
19 authorization from Class Members -- unlawfully deducted from the agreed upon
20 wages Yurcor's "administrative overhead costs." Yurcor's "administrative
21 overhead costs" consisted of the employer share of FICA, FUTA, SUI taxes and
22 worker's compensation deductions, apparently for insurance coverage for the
23 individual.

24 (f) The employment of Class Representative Nathaniel Wilson is
25 illustrative of the treatment of Class Members.

26 In August 2011, The Mill offered Wilson work as visual effects artist on a
27 project. Mr. Wilson performed almost all his work throughout his career as an

1 employee. On August 24, 2011, Mr. Wilson was sent an e-mail from The Mill
 2 indicating that: "We are good to confirm you from the 29th August to 2nd
 3 September at \$550 per 10-hour day, with weekend work, *and with The Mill*
 4 *covering Yurcor administrative expenses.* We have a first hold on you, which I am
 5 pretty confident will turn into a booking from 3rd September to 16 September. In
 6 addition, we would like to keep you on hold from 17 September to 30 September
 7 for your future work." (emphasis added)

8 (g) On August 25, 2011, Mr. Wilson received an introductory letter from
 9 Yurcor. The letter stated, in pertinent part:

10 "2. Yurcor's Employer of Record (EOR) service
 11 combines the freedom to choose your own assignments
 12 with the security of portable health and retirement
 13 benefits and the convenience of back office support.

14 "3. As a Yurcor consultant, you run your own business
 15 unit as a Yurcor W-2 employee. You select your clients,
 16 set your rates, perform the work, enter your time and
 17 expenses online.

18 "4. You will be covered under Yurcor's business
 19 insurance and workers compensation policies. Yurcor
 20 will handle your invoicing, collections and expenses and
 21 deduct payroll taxes from your direct deposit payroll.

22 "5. Please note: you will also keep most of the pre-tax
 23 deductions you now enjoy as a 1099 freelancer.

24 "Summary: By using Yurcor's services you gain W-2
 25 status and many of the benefits and services of a full time
 26 position while keeping all the career freedom and tax Z

1 “Please review the attached PDF for more detailed
 2 information – including how going W-2 compares with
 3 1099 status and self-incorporation.”

4 (h) On or about the same date, Mr. Williams received a second E-mail
 5 from Yurcor that explained:

6 “You will be covered under Yurcor’s business insurance
 7 and worker’s compensation policy. Yurcor will handle
 8 your invoicing, collections and expenses and deduct
 9 payroll taxes from your direct deposit payroll. Yurcor
 10 will deduct the employer tax (worker’s comp, FICA,
 11 FUTA, SUI), as well as the employee side of the taxes
 12 from your payroll when a payroll is ran.”

13 (i) On September 30, 2011, Mr. Wilson received a Payroll Report from
 14 Yurcor indicating that for the period from August 29 to September 8, he worked
 15 eleven days for a total amount of \$6,050 (Yurcor labeled it as “Yurcor labor
 16 collected”). From this total, Yurcor deducted the total amount of \$804.63, which
 17 Yurcor labeled as “Yurcor administrative overhead costs”. Yurcor administrative
 18 costs consisted of the following items:

Category	Amount
Employer FICA	\$401.27
Employer FUTA	\$31.47
Employer SUI	\$325.21
Workers Compensation Deduction	\$46.68

Total	\$804.63
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Yurcor separately deducted employee payroll taxes totaling \$1,985.16 and paid Mr. Wilson \$5,245.34.

(j) On October 14, 2011, Mr. Wilson received another Payroll Report detail from Yurcor for seven days in the total amount of \$3,850. From that amount, Yurcor deducted \$412.85 for "Yurcor administrative overhead costs". These costs consisted of:

Category	Amount
Employer FICA	\$262.94
Employer FUTA	\$10.53
Employer SUI	\$108.79
Workers Compensation Deduction	\$30.59
Total	\$412.85

After deducting employee expenses of \$1,170.02, Mr. Wilson received a check for \$2,267.13.

(k) Mr. Wilson's complaints about these deductions to The Mill were directed to Yurcor. Yurcor's responses were purposeful confusion and misdirection. On October 13, 2011, Yurcor sent Mr. Wilson an E-mail "explaining" that:

"The rate that was offered to you from The Mill was a freelancer rate, not a direct hire rate. ... Again, as you

1 can seem the Yurcor employer of record service is very
2 similar to how you operated in your past 1099 work, but
3 what was done at the end of the year is now processed
4 per payroll."

5 (l) In their Second Amended Complaint, class members seek to recover
6 all wages owed to them on the contract or under law, penalties pursuant to
7 California *Labor Code* §§2699(a) and 2699.3, and attorney's fees and costs
8 pursuant to *Labor Code* §2699(g)(1).

9 (m) The Complaint presents causes of action for willful misclassification
10 as independent contractors pursuant to *Labor Code* §§226.8, 2753 and 2699;
11 violation of *Labor Code* §201.5(b) providing that an employee engaged in the
12 production or broadcasting of motion pictures whose employment terminated was
13 entitled to receive payment of the wages earned and unpaid at the time of
14 termination by the next regular payday; violation of *Labor Code* §221, which
15 makes it unlawful for employers to utilize secret deductions to pay employees less
16 than their stated wages; violation of *Labor Code* §223, which makes it unlawful to
17 secretly pay a lower wage while purporting to pay the wage designated by statute
18 or contract; violation of *Labor Code* §224, which makes it unlawful to withhold or
19 divert a portion of employees' wages where employers were not required or
20 empowered to do so by state or federal law; unfair business practices pursuant to
21 California *Business and Professions Code* §17200; common law conversion.
22

23 9. Starting in early January 2013, counsel for the parties commenced
24 several discussions in preparation for the February 25, 2013 status conference,
25 which was continued by the Court because the parties agreed to mediation to be
26 held on March 14, 2013. In approximately mid January 2013 Plaintiffs
27 propounded discovery (that is, comprehensive requests for documents and
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1 admissions, as well as interrogatories) to each Defendant, and the due date for
2 responses was later continued pending the results of the mediation.

3 10. Prior to the mediation, I personally consulted with all of the named
4 Plaintiffs regarding acceptable parameters to each Plaintiff to tentatively agree
5 upon settlement terms, subject to Court approval. Class Representatives were
6 aware that in preparation for the settlement negotiations, Plaintiffs' counsel were
7 thoroughly evaluating the merits of the case, including spending considerable time
8 reviewing and analyzing legal issues, as well as documents provided by Plaintiffs,
9 by other putative Class Members, and by Defendants. On March 14, 2013,
10 Plaintiffs and Defendants participated in a full-day mediation of the disputes at
11 issue in this action before Lynn S. Frank, a veteran mediator, and reached a
12 tentative settlement of the action on such date. The mediation spanned
13 approximately 13 hours on that date and negotiations were at arm's length. All
14 Plaintiffs' counsel participated (SSDS and GR attorneys in person, and FDPK
15 attorneys by telephone). Subsequently, on July 26, 2013, the Parties entered into a
16 formal *Amended Settlement Agreement*. A key factor Plaintiffs considered in
17 agreeing to the settlement amount was that it was large enough that all Class
18 Members would receive all wages due (i.e., the alleged improperly deducted
19 "Yurcor Administrative Overhead Costs") **and** essentially an equal amount in
20 penalties, which Plaintiffs' counsel anticipate would be paid in just over one year
21 from the filing of the suit.

22 11. Each of Plaintiffs Wilson and Servello spent approximately 8-10
23 hours meeting in person with Stuart Libicki on two separate occasions to discuss
24 the facts of the case. Plaintiff Shwartz spent approximately three hours meeting
25 with Mr. Libicki personally. Plaintiff Hoffman resides back east so their
26 conversations were strictly by phone and email. Plaintiff Hoffman was added as a
27 named Plaintiff to avoid an issue raised by Defendants during the first early
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1 meeting of counsel as to whether the other three Plaintiffs could adequately
2 represent those who were hired after December 31, 2012, when the law regarding
3 misclassification of employees as independent contractors took effect (California
4 Labor Code §§ 226.8 and 2753). Once Mr. Hoffman was identified, the parties
5 stipulated to his addition as a named Plaintiff. Each of the Plaintiffs separately
6 spent approximately two or more hours discussing the case with Mr. Libicki by
7 phone and email in addition to meetings. Each of the Plaintiffs was prepared to be
8 deposed, provide responses to discovery, testify at trial and otherwise assist in the
9 prosecution of the case (e.g., by helping counsel locate and persuade others to be
10 witnesses as necessary and by obtaining additional documents).

11 12. The terms of the proposed distribution of settlement funds, \$1,350,000
12 are fully described in the Preliminary Approval Motions and in Section(s) C of the
13 Settlement Agreement. To summarize, if approved by the court, the following
14 distribution will take place:

15 (a) Each Class Member will be paid an amount (barring any correction
16 for errors) equal to the “Yurcor Administrative Overhead Costs” (i.e., what
17 amounted to employer payroll taxes) deducted from their checks for work
18 performed through March 14, 2013, which for all Class Members totals
19 \$437,643.73.

20 (b) Each Class Member will also be paid *an equal amount to all other*
21 *Class Members from the* waiting-time penalty portion of the Settlement Amount
22 projected to total approximately \$537,857 or approximately \$2,600 per *Class*
23 *Member*. The 205 Class Memers will therefore receive a total of \$975,500 or
24 72.2% of the Settlement Amount.

25 (c) Each named Plaintiff will be paid a Case Contribution Award of
26 \$1,500 or a total of \$6,000 for all four of them.

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1 (d) The California Labor Workforce Development Agency will receive
2 \$10,000.

3 (e) The Settlement Administrator will receive an estimated \$11,000 as the
4 final terms remain to be negotiated.

5 (f) Plaintiffs' counsel will seek the balance of the settlement funds,
6 \$337,500 for litigation expenses (approximately \$10,000) and as attorney's fees,
7 subject to Court approval. *The parties agreed in the Amended Settlement
8 Agreement that Defendants would not oppose Plaintiffs' motion if the fees did not
9 exceed 1/4 of the settlement funds, \$337,500, which the requested fees do not.*

10 13. Plaintiffs and their counsel respectfully request the Court to certify the
11 Class and preliminarily approve the Settlement Agreement. If the unopposed
12 motions are granted, the Court has already established the necessary dates for the
13 (1) notices to be given Class Members and Federal and State officials, (2) filing by
14 Plaintiffs of the motion for fees and costs, (3) objections and opt outs to be filed by
15 Class Members, (4) filing by Plaintiffs for their motion for final approval of the
16 Settlement Agreement, and (5) hearing on whether the Court will grant final
17 approval.

18 14. Class Counsel's recommendation for the approval of the Settlement
19 Agreement is based on their joint and agreed assessment of the litigation risks,
20 which in turn is based on their collective experience with wage actions, the
21 California Labor Code, and class actions. In addition, Plaintiffs will receive
22 double what they allegedly lost in wages in relatively prompt time. Finally, it
23 should be noted that the balance of any greater monetary recovery by Plaintiffs
24 after trial (or summary judgment), if successful, would be limited to additional
25 penalty payments.

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1 **COUNSEL'S EXPERIENCE WITH EMPLOYEE BENEFITS LITIGATION**

2 15. Mr. Libicki received his J.D. Degree in 1973 from Berkeley Law at
3 the University of California (Boalt Hall). He has practiced law for over 39 years.
4 For that entire time, he has been primarily engaged in the practice of labor law
5 representing unions and their members and Taft-Hartley trust funds. He was lead
6 and sole counsel on two wage and hour cases, which were resolved by litigation
7 and settlement, respectively, in 1999-2000. In those cases, his firm (SSDS)
8 represented several hundred employees in opt-in class actions and recovered
9 approximately \$1 million in each case. Mr. Libicki was also lead and essentially
10 sole counsel in ACTWU et al., v. Murdock, et al., which was a representative
11 ERISA action brought by six pension plan participants on behalf of all pension
12 plan participants, which settled in 1990 for \$1.75 million after a two-week trial
13 before Judge Irving Hill, following a successful appeal to the Ninth Circuit.
14 SSDS's resume is attached hereto as Exhibit B, which includes a section describing
15 his background and a more detailed description of the aforementioned cases.
16 SSDS served among class counsel in an action brought by writers against the
17 motion picture and television industries and agents, which settled in 2010, for
18 approximately \$80 million.

19 Attached hereto as Exhibits C, D and E are the resumes of myself and
20 William Payne and Pamina Ewing of FDPK. I have over 45 years of experience as
21 a litigator in Federal and California state courts and have defended a number of
22 class actions. Mr. Libicki and I have a successful history of working together on
23 cases. Mr. Payne – Mr. Libicki's former law partner -- was associated as counsel
24 because of his firm's expertise a plaintiffs' counsel in class actions.

25 I declare under penalty of perjury under the laws of the United States of
26 America that the foregoing is true and correct.

27 /////
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1 Executed on July 26, 2013 at Encino, California.
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5 ARTHUR GREBOW
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EXHIBIT “A”

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15 Attorneys for Plaintiffs Nathaniel
16 Wilson, David Shwartz, Richard
17 Servello and Tim Hoffman, on behalf
of themselves and all others similarly
situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

21 NATHANIEL WILSON, DAVID
22 SHWARTZ, and RICHARD,
23 SERVELLO, on behalf of themselves
and all others similarly situated,

CASE NO. 2:12-CV-10214-SVW-MAN

**AMENDED
SETTLEMENT AGREEMENT**

Hon. Stephen V. Wilson
Courtroom 6

25 vs.
26 THE MILL GROUP INC., et al.
27 Defendants.

Defendants

1 The undersigned parties (collectively the “Parties” and each separately a
2 “Party”) to the above-captioned action (the “Action”), by and through their
3 attorneys, have entered into this Amended Settlement Agreement (the
4 “Agreement”), subject to the approval of this Court, which replaces and supersedes
5 the Settlement Agreement executed in this matter on June 28, 2013:

6 **1. RECITALS**

7 This Agreement, including its attached Exhibits, is entered into by and
8 among Plaintiffs, on behalf of themselves and on behalf of each of the Settlement
9 Class Members, and Defendants The Mill Group, Inc. (“the Mill”) and The
10 Churchill Benefit Corporation, dba Yurcor (“Yurcor”). Capitalized terms used
11 herein are defined in Section II herein or indicated in parentheses elsewhere in the
12 Agreement. Subject to Court approval as required by the applicable Federal Rules
13 of Civil Procedure, and as provided herein, the Parties hereby stipulate and agree
14 that, in consideration for the promises and covenants set forth in the Agreement
15 and upon the entry by the Court of a Final Judgment and Order Approving
16 Settlement and the occurrence of the Effective Date, the Action shall be settled and
17 compromised upon the terms and conditions contained herein.

18 WHEREAS, The Mill is a production company, located in Los Angeles, that
19 develops and creates visual effects for the broadcasting of commercial
20 advertisements, film and television;

21 WHEREAS, Yurcor is a self-described “provider of human resource
22 services” which provided an “employer of record” payroll services arrangement
23 pursuant to a contract with The Mill;

24 WHEREAS, Class Members performed temporary services for The Mill as
25 employees that were hired by Yurcor as their “employer of record”;

26 WHEREAS, on September 14, 2012, Plaintiffs filed a Class Action against
27 The Mill and Yurcor in Los Angeles County Superior Court as Case No.
28 BC492168 alleging that Defendants The Mill and Yurcor, as joint employers,

1 unlawfully failed to pay the Class Members' full wages and/or improperly
2 misclassified Class Members as independent contractors;

3 WHEREAS, on November 29, 2012, Defendants The Mill and Yurcor
4 removed such action to the United States District Court, Central District of
5 California;

6 WHEREAS, on February 13, 2013, Plaintiffs filed a Second Amended Class
7 Action Complaint ("the Complaint") in the United States District Court of the
8 Central District of California, entitled Nathaniel Wilson, et al. v. The Mill Group,
9 Inc., et al., Case No. 2:12-CV-10214-SVW-MAN ("the Action") seeking to certify
10 a class of members who performed their artists services for The Mill and were
11 compensated by Yurcor;

12 WHEREAS, on March 14, 2013, Plaintiffs and Defendants participated in a
13 full-day mediation of the disputes at issue in this Action before Lynn S. Frank and
14 reached a tentative settlement of the Action on such date;

15 WHEREAS, Plaintiffs are members of the proposed Class alleged in the
16 Action;

17 WHEREAS, Plaintiffs and the proposed Class are represented by Schwartz,
18 Steinsapir, Dohrmann & Sommers LLP, Feinstein Doyle Payne & Kravec, LLC,
19 and Grebow & Rubin, LLP (collectively "Class Counsel");

20 WHEREAS, Class Counsel have conducted an examination and
21 investigation of the facts and law relating to the matters set forth in the Action and
22 have also interviewed witnesses and documents;

23 WHEREAS, Plaintiffs and Class Counsel believe that the claims asserted in
24 the Action have merit; however, taking into account the extensive burdens and
25 expense of litigation, including the risks and uncertainties associated with
26 protracted trials and appeals, as well as the fair, cost-effective and assured method
27 of resolving the claims of the Settlement Class, Class Counsel and Plaintiffs have
28 concluded that this Agreement provides substantial benefits to the Settlement

1 Class, and is fair, reasonable, adequate, and in the best interests of Plaintiffs and
2 the Settlement Class;

3 WHEREAS, although The Mill and Yurcor deny that the Action is suitable
4 for class certification treatment (other than for purposes of a settlement class) and
5 further deny the liability alleged by Plaintiffs, The Mill and Yurcor also have taken
6 into account the uncertainty, risk, and delay inherent in litigation and agreed to
7 enter into the Agreement to avoid further litigation expense and inconvenience,
8 and to remove the distraction of burdensome and protracted litigation;

9 WHEREAS, it is the intention and desire of the Plaintiffs and The Mill and
10 Yurcor to compromise, resolve, dismiss and release all allegations and claims for
11 damages or other relief, through the date of Preliminary Approval, that (1) are set
12 forth in the Complaint and/or that have been or could have been brought against
13 The Mill, Yurcor or their Released Parties, or any of them, in the Action and in any
14 action filed, litigation pending or claim pursued by any Person or entity who is a
15 member of the Settlement Class, arising from or relating to the facts alleged in the
16 Complaint and (2) arise from or are related to the facts alleged in the Complaint
17 that could have been brought against the named Plaintiffs;

18 NOW, THEREFORE, the Agreement is entered into by and among the
19 Parties, by and through their respective counsel and representatives, and the Parties
20 agree that: (a) upon approval of the Court after the hearing(s) provided for in the
21 Agreement, the Action and all Released Claims shall be settled and compromised
22 as between Plaintiffs and the Settlement Class on the one hand, and The Mill and
23 Yurcor on the other hand; and (b) upon Court approval of the Agreement, the
24 [Proposed] Final Judgment and [Proposed] Order Approving Settlement,
25 substantially in the form attached as Exhibit 1 hereto, shall be entered dismissing
26 the Action with prejudice and releasing all Released Claims, as defined herein,
27 against The Mill and Yurcor and all Released Parties, all on the following terms
28 and conditions:

1 **1. DEFINITIONS**

2 As used in the Agreement and the Exhibits hereto, in addition to any
3 definitions elsewhere in the Agreement, the following terms shall have the
4 meanings set forth herein:

5 1. “Action” means *Nathaniel Wilson, et al. v. The Mill Group, Inc., et*
6 *al.*, Case No. 2:12-CV-10214-SVW-MAN (C.D. Cal.).

7 2. “Agreement” means this Settlement Agreement (including all Exhibits
8 attached hereto).

9 3. “Award” means the monetary relief obtained by Settlement Class
10 Members pursuant to Section 3(C)(1) of this Agreement.

11 4. “Attorneys’ Fees and Expenses” means such funds as may be awarded
12 by the Court to Class Counsel as set forth herein to compensate them for their fees
13 and expenses in connection therewith, as described more particularly in Section 7
14 of this Agreement.

15 5. “Class Member” means an individual member of the Settlement Class
16 identified in Exhibit 2 hereto, all of whom are included in the description of the
17 “Class” as set forth herein.

18 6. “Claims Administration Expenses” means the expenses incurred by
19 the Claims Administrator in administering the Notice Program and processing all
20 payments to Settlement Class Members and the California Labor Workforce
21 Development Agency.

22 7. “Claims Administrator” means the third-party administrator selected
23 jointly by the Parties, CPT Group, Inc.

24 8. “Class Notice” or “Notice” means the form of notice to be
25 disseminated to Settlement Class Members informing them about the Settlement.
26 A copy of the proposed Notice is attached in the form of Exhibit 3 hereto.

27 9. “Class Representatives” means Plaintiffs Nathaniel Wilson, David
28 Shwartz, Richard Servello, and Tim Hoffman.

1 10. "Class Counsel" means the law firms of Schwartz, Steinsapir,
2 Dohrmann & Sommers LLP, Feinstein Doyle Payne & Kravec, LLC and Grebow
3 & Rubin, LLP.

4 11. "Complaint" means the Second Amended Complaint filed by
5 Plaintiffs on February 13, 2013 in the Action.

6 12. "Court" means the United States District Court for the Central District
7 of California, the Honorable Stephen V. Wilson presiding.

8 13. "Defendants" means The Mill and Yurcor, and includes, without
9 limitation, all related entities including but not limited to parents, subsidiaries,
10 agents, employees and assigns, predecessors, successors and affiliates.

11 14. "Effective Date" means either: (a) the date thirty-five (35) days after
12 the entry of the Final Judgment and Order Approving Settlement, if no timely
13 motions for reconsideration and/or no appeals or other efforts to obtain review
14 have been filed; or (b) in the event that an appeal or other effort to obtain review
15 has been initiated, the date thirty-five (35) days after such appeal or other review
16 has been finally concluded and is no longer subject to review, whether by appeal,
17 petitions for rehearing en banc, petitions for writ of certiorari, or otherwise.

18 15. "Final Approval Hearing" means the hearing to be conducted by the
19 Court on such date as the Court may order to determine the fairness, adequacy and
20 reasonableness of the Settlement in accordance with applicable jurisprudence.

21 16. "Final Judgment and Order Approving Settlement" means the final
22 Judgment and Order Approving Settlement to be entered by the court, substantially
23 in the form of Exhibit 1 and conforming to Section 9 herein, approving the
24 Settlement as fair, adequate and reasonable, confirming the certification of the
25 Settlement Class for purposes of the Settlement only, and issuing such other
26 findings and determinations as the Court and/or the Parties deem necessary and
27 appropriate to implement the Settlement.

28

1 17. “Motion for Preliminary Approval of Settlement” means the motion,
2 to be filed by Plaintiffs, for Preliminary Approval of this Agreement and includes
3 all supporting papers including the Motion for Class Certification.

4 18. “Notice Expenses” means the reasonable costs and expenses incurred
5 in connection with preparing, printing, mailing, disseminating, posting, emailing,
6 internet hosting and for publishing the class Notice, and all other aspects of
7 administering the Notice Program.

8 19. “Notice Date” means no later than 45 days after the Court enters an
9 order granting Preliminary Approval of this Settlement. Notice shall be made in
10 accordance with the Notice Program described in Section 5 below.

11 20. “Opt Out” means the date, to be set by the Court, by which a Request
12 for Exclusion from the Class must be filed with the Claims Administrator in order
13 for a Settlement Class Member to be excluded from the Settlement Class.

14 21. “Objection Date” means the date by which Settlement Class Members
15 must file objections, if any, to the Settlement in accordance with Section 6(1)
16 herein.

17 22. “Plaintiffs” means Plaintiffs Nathaniel Wilson, David Shwartz,
18 Richard Servello and Tim Hoffman.

19 23. “Preliminary Approval” means the initial approval of settlement
20 issued by the Court pursuant to an order, substantially in the form of Exhibit 4 and
21 conforming to Sections 3(A) and 3(B) herein, conditionally certifying the
22 Settlement Class, preliminarily approving the Settlement, setting the date of the
23 final Approval Hearing, appointing Class Counsel as Counsel for the Settlement
24 Class, approving the Notice Program and Class Notice, and setting dates for the
25 Claims Deadline, Opt Out and Objection Date, and Notice Date.

26 24. “Request for Exclusion” means the written communication that must
27 be filed with the Claims Administrator and postmarked on or before the Opt Out
28

1 and Objection Date by a Settlement Class Member who wishes to be excluded
2 from the Settlement Class.

3 25. “Restitution” means the total compensation paid to Settlement Class
4 Members in satisfaction of their Claims.

5 26. “Settlement” means the terms and conditions of this Agreement.

6 27. “Settlement Class” and “Settlement Class Member(s)” each means all
7 individuals who at any time on or after September 14, 2009 and at any time up to
8 and including March 14, 2013 worked or performed and completed services in
9 California for The Mill in the pre-production, production or post-production
10 processes of motion pictures, television programs, advertising, game art or other
11 visual content, as to whom Yurcor performed services for The Mill and/or the
12 respective individual (for example, payroll processing services, “employer of
13 record” services or “Yurcor’s third-party payroll services program”).

14 28. “Settlement Consideration” means the consideration exchanged by
15 and between The Mill, Yurcor and the Settlement Class, as set forth in this
16 Agreement.

17 **2. TERMS AND CONDITIONS**

18 **A. Conditional Class Certification For Settlement Purposes Only**

19 1. This Agreement is for settlement purposes only, and neither the
20 fact of, nor any provision contained in this Agreement or its Exhibits, nor any
21 action taken hereunder, shall constitute, be construed as, or be admissible in
22 evidence as an admission of: (a) the validity of any claim or allegation by
23 Plaintiffs, or of any defense asserted by the Defendants, in the Action or any other
24 action or proceeding; or (b) any wrongdoing, fault, violation of law, or liability of
25 any kind on the part of any Party, Released Party, Settlement Class Member or
26 their respective counsel.

27 2. As part of their Motions for Preliminary Approval of
28 Settlement, Plaintiffs will seek certification of the Class. The Class sought to be

1 certified by Plaintiffs shall be certified for settlement purposes only, and shall be
2 defined as: All individuals who at any time on or after September 14, 2009 and up
3 to and including March 14, 2013 worked or performed and completed services in
4 California for The Mill in the pre-production, production or post-production
5 processes of motion pictures, television programs advertising, game art or other
6 visual content, as to whom Yurcor performed services for The Mill and/or the
7 respective individual (for example, payroll processing services, "Employer of
8 Record" services or "Yurcor's third party payroll services program").

9 3. Subject to Court approval and for settlement purposes only,
10 Plaintiffs Nathaniel Wilson, David Shwartz, Richard Servello and Tim Hoffman
11 will be appointed Class Representatives and their counsel, Schwartz, Steinsapir,
12 Dohrmann & Sommers LLP, Feinstein Doyle Payne & Kravec, LLC and Grebow
13 & Rubin, LLP, will be appointed Class Counsel for the Settlement Class.

14 4. This Agreement is without prejudice to the rights of each
15 Releasing Party and each Released Party (as defined below) to: (a) seek or oppose
16 class certification in the Action should the Agreement not be finally approved or
17 implemented for any reason; or (b) seek or oppose class certification in any other
18 action (unless barred by the Releases).

19 **B. Required Events and Cooperation by The Parties**

20 1. Preliminary Approval

21 The Settling Parties and their respective counsel agree that Plaintiffs shall
22 seek Preliminary and Final Approval of the Settlement as described herein. As
23 soon as reasonably practicable after execution of the Agreement, Plaintiffs shall
24 submit, and Defendants shall not oppose, Motions for Class Certification and
25 Preliminary Approval, which shall include this Agreement, including all Exhibits,
26 and shall seek an order of Preliminary Approval from the Court, substantially in
27 the form of Exhibit 4 hereto, which, by its terms shall:

28

1 a. Determine preliminarily that this Agreement and the
2 Settlement set forth herein fall within the range of reasonableness meriting possible
3 final approval and dissemination of Notice to the Settlement Class;

4 b. Determine preliminarily that the Class Representatives
5 are members of the Settlement Class and that, for purposes of the Settlement,
6 satisfy the requirements of typicality, and that they adequately represent the
7 interests of the Settlement Class Members, and appoint them as the representatives
8 of the Settlement Class;

9 c. Determine preliminarily that the Settlement Class meets
10 all applicable requirements of Fed.R.Civ.P. 23 (“Rule 23”), and conditionally
11 certify the Settlement Class for purposes of the Agreement under Rule 23 for
12 settlement purposes only;

13 d. Appoint Schwartz, Steinsapir, Dohrmann & Sommers
14 LLP, Feinstein Doyle Payne & Kravec, LLC and Grebow & Rubin, LLP, as Class
15 Counsel pursuant to Rule 23(g);

16 e. To the extent not already done so, schedule the Final
17 Approval Hearing to: (i) determine finally whether the Settlement Class satisfies
18 the applicable requirements of Rule 23 and should be finally certified for
19 settlement purposes only; (ii) review objections, if any, regarding the Agreement;
20 (iii) consider the fairness, reasonableness and adequacy of the Settlement; (iv)
21 consider Class Counsel’s application for an award of attorneys’ fees and
22 reimbursement of expenses consistent with the stipulation of the Parties set forth
23 herein; (v) determine the validity of Requests for Exclusion and exclude from the
24 Settlement Class those Persons who validly and timely opt out; and (vi) consider
25 whether the Court shall issue the final Judgment and Order Approving Settlement
26 approving the Settlement and dismissing the Action with prejudice;

27 f. To the extent not already done so, set a briefing schedule
28 for the Final Approval Hearing;

5 i. Determine that the Class Notice and the Notice Program:

6 (i) meets the requirements of Rule 23(c)(3) and due process; (ii) is the best
7 practicable notice under the circumstances; (iii) is reasonably calculated, under the
8 circumstances, to apprise Settlement Class Members of the pendency of the action
9 and their right to object to the proposed Settlement or opt out of the Settlement
10 Class; and (iv) is reasonable and constitutes due, adequate and sufficient notice to
11 all those entitled to receive notice:

15 k. Rule that any Settlement Class Member who does not
16 submit a timely written Request for Exclusion will be bound by all proceedings,
17 orders and judgments in the Action;

18 1. Require any Settlement Class Member who wishes to
19 object to the fairness, reasonableness or adequacy of the Agreement or to the
20 award of attorneys' fees, costs and expenses, to deliver to Class Counsel and The
21 Mill and Yurcor's Counsel and to file with the court, by the Opt Out and Objection
22 Date, a statement of his or her membership in the Class, a statement of his or her
23 objection, as well as the specific reason, if any, for each objection, including any
24 legal support the Settlement Class Member wishes to bring to the Court's attention
25 and any evidence the Settlement Class Member wishes to introduce in support of
26 his or her objection, and to state whether the Settlement Class Member and/or his
27 or her counsel wishes to make an appearance at the Final Approval Hearing, or be
28 forever barred from separately objecting; and

1 2. Cooperation

2 The Parties acknowledge that each intends to implement the Settlement.

3 The Parties shall, in good faith, cooperate and assist with and undertake all
4 reasonable actions and steps in order to accomplish all required events on the
5 schedule set by the Court, and shall use their best efforts to implement all terms
6 and conditions of the Agreement.

7 C. Settlement Consideration

8 (1) Settlement Payment

9 The Mill and Yurcor shall pay a settlement amount for all Claims for unpaid
10 wages, deductions, penalties, attorneys' fees, costs, expenses, Settlement
11 administration expenses, damages, restitution, interest and equitable relief in the
12 sum of One Million Three Hundred Fifty Thousand Dollars (\$1,350,000.00)
13 ("Settlement Amount").

14 (2) Monetary Relief For Settlement Class Members

15 Settlement Class Members who comply with the conditions and
16 requirements specified herein (including not opting out) shall have the right to
17 obtain relief from the Settlement Amount, as detailed below:

18 a. Net Funds Available for Settlement means the Settlement
19 Amount set forth in subparagraph a above, less (1) case contribution awards to the
20 Class Representatives as approved by the Court; (2) the amount of attorneys' fees
21 and litigation costs awarded to Class Counsel by the Court; and (3) administration
22 costs.

23 b. Settlement Class Members (not opting out) shall be
24 reimbursed the "Disputed Payroll Deductions" (that is, the respective deductions
25 from Class Members' pay, which would be equivalent in each case to the amount
26 that would otherwise have been paid for the payment of employer payroll taxes)
27 which amounts are identified in Exhibit 2. These are the amounts that are claimed
28 due to each Class Member as wages. Class Counsel may modify the amounts to

1 correct any errors discovered after the date of execution of this Agreement by
2 jointly filing a revised Exhibit 2 with the Court. Thus, subject to Court approval
3 and before (and not after) distribution of Class Settlement Payments, Exhibit 2 may
4 be modified to correct errors, thus adjusting the specific amount of each Class
5 Member's "Disputed Payroll Deductions." In no event will such a correction cause
6 any sums to be paid by The Mill or Yurcor in excess of the Settlement Amount.

7 c. The California Labor Workforce Development Agency
8 shall be paid the sum of \$10,000.00 from the Settlement Amount.

9 d. Settlement Class Members (not opting out) shall each be
10 paid a waiting-time penalty portion from the Settlement Amount, calculated by
11 dividing the remaining portion of the Net Funds Available for Settlement evenly
12 amongst the entire class per Class Member.

13 e. Each of the four Class Representatives shall receive case
14 contribution awards from the Settlement Amount in the amount of \$1,500.00
15 (totaling \$6,000.00) subject to Court approval.

16 "Disputed Payroll Deductions" will be considered the wage portion of each
17 Settlement award to each eligible Class Member with appropriate standard
18 employee payroll deductions therefrom and shall be reported by Yurcor on an IRS
19 Form W-2. The remaining portion awarded to each eligible Class Member shall be
20 reported on an IRS Form 1099 and characterized as penalties. Eligible Class
21 Members shall be solely and legally responsible to pay all applicable employee
22 taxes. Defendants shall provide the Claims Administrator with a payroll check and
23 penalty check for each Class Member from the Settlement Amount for distribution
24 within five (5) business days after the Effective Date.

25 Restitution (wage and penalty checks) shall be forwarded by the Claims
26 Administrator to Settlement Class Members within 10 days of receipt from
27 Defendants. All checks issued under this Paragraph shall state on their face that
28 they must be cashed within 90 days from the date issued or they will become void.

1 The amount of any checks that are not cashed within 90 days from the date issued
2 or that are returned to the Claims Administrator as undeliverable, after mailing to
3 the Settlement Class Member at the address provided by the Defendants, will cease
4 to be the property of those Settlement Class Members. Within 10 days of the
5 expiration of said 90 day period, (1) the Claims Administrator shall notify the
6 Parties' Counsel of the name of each Class Members for whom checks were
7 returned as undeliverable and the respective amount; and (2) Defendants shall
8 determine the name of each Class Member who did not cash his/her check even
9 though it was not returned and notify Plaintiffs' Counsel.

10 f. The Settlement Agreement does not contain any
11 reversion provisions because there is no opt-in procedure and all Class Members
12 will receive a settlement payment unless they opt out. Within 60 days of the
13 expiration of the 90 day period set forth in Section C(2)e, the Claims Administrator
14 will immediately issue a check for one-third of the amount of any checks that have
15 not been cashed as of that date to The Mill, one-third to Yurcor and one-third to the
16 Public Interest Law Foundation at USC Gould School of Law in Los Angeles.

17 **3. SETTLEMENT BENEFITS AND PAYMENTS**

18 A. In exchange for the Releases set forth in Section 6, and subject to all
19 of the terms of this Settlement Agreement, Defendants agree to pay each Class
20 Member not opting out or, if appropriate, such Class Member's Successor, a Class
21 Member Settlement Payment described in Section 2 from the Settlement Amount.

22 B. **Class Member Settlement Payment.** The Class Member Settlement
23 Payment for each Class Member shall be determined as follows:

24 1. Each Class Member not opting out shall receive a share of the
25 net funds available for Settlement calculated by payment of the "Administrative
26 Overhead Costs" deducted by Yurcor for services performed at The Mill during the
27 period on or after September 14, 2009 to and including March 14, 2013 (See
28 Exhibit 2), and an additional payment (by a second check without payroll

1 deductions) as waiting-time penalties, with the latter to be distributed evenly
2 amongst the entire class per Class Member (“Disputed Payroll Deductions”).

3 2. The amounts due to each Class Member under Section 4.2(a)
4 are shown in Exhibit 2 hereto. Exhibit 2 identifies the individuals who, according
5 to Defendants’ records, are all the members of the Settlement Class. Class Counsel
6 may modify the proposed apportionment to correct any errors discovered after the
7 Execution Date by filing a revised Exhibit 2 with the Court. Thus, subject to Court
8 approval and before (and not after) distribution of Class Settlement Payments,
9 Exhibit 2 may be modified to correct errors, thus adjusting Class Member
10 Settlement Payments.

11 **C. Notice to Class Members of Amount of Settlement Payment.**

12 Within 60 days following the Effective Date, Class Administrator shall send each
13 Class Member the amount of his or her Class Member Settlement Payment (in two
14 checks) to the last known address of each known Class Member as it appears in
15 Defendants’ records.

16 **D. Withholding for Income Tax.** Each Class Member Settlement
17 Payment for “Disputed Payroll Deductions” shall be subject to withholding for
18 income tax to the extent that such withholding for income tax is required by law.
19 No withholding shall be taken from the waiting-time penalty portion check of the
20 Settlement payment.

21 **E. Payees for Class Member Benefits.** In the event that a Class
22 Member is deceased, the Claims Administrator shall pay such Class Member’s
23 Settlement Payment to the Class Member’s Successor in accordance with
24 California law.

25 **F. Lost Class Members.** If the Claims Administrator cannot ascertain
26 the whereabouts of any Class Member and the check cannot therefore be provided
27 to or cashed by the Class Member, such Class Member’s Settlement Payment shall
28 be treated as provided in Section C(2)(f).

1 **4. NOTICE TO THE SETTLEMENT CLASS**

2 A. On or before September 23, 2013, if the Court has entered an order
3 granting Preliminary Approval, the Class Counsel shall cause the Class Notice to
4 be disseminated to potential Settlement Class Members as provided herein
5 ("Notice Date").

6 B. Notice Program.

7 1. The Class Notice: The Class Notice shall be in substantially the
8 form of Exhibit 3, attached hereto. At a minimum, the class Notice shall include:
9 a. a short, plain statement of the background of the Action
10 and the proposed Settlement;

11 b. describe the proposed Settlement relief as set forth in this
12 Agreement;

13 c. inform Settlement Class Members that, if they do not
14 exclude themselves from the Settlement Class, they may be eligible to receive
15 relief;

16 d. describe the procedures for participating in the
17 Settlement including all applicable deadlines and advise Settlement Class Members
18 of their rights, including their right to opt out of the Class or object to the
19 Settlement;

20 e. explain the scope of the Release and the impact of the
21 proposed Settlement on any existing litigation, arbitration or other proceeding;

22 f. state that any Award to Settlement Class Members under
23 the Settlement is contingent on the Court's final approval of the proposed
24 Settlement;

25 g. the identity of Class Counsel and the amount sought in
26 attorneys' fees and costs;

27 h. explain that Counsel for the Parties may not advise on the
28 tax consequences of participating or not participating in the Settlement;

1 i. explain the procedures for opting out of the Settlement
2 including the applicable deadline for opting out as well as the consequences of
3 opting out; and

13 2. Direct Mail Notice: The Claims Administrator shall mail the
14 Notice to those Settlement Class Members for whom The Mill or Yurcor can
15 provide either a U.S. Postal address or an e-mail address.

16 3. The Class Administrator shall provide the Court with
17 documentation showing and an affidavit attesting that Notice was effected pursuant
18 to the Notice Program.

19 | P a g e | 5. OBJECTIONS AND REQUESTS FOR EXCLUSION

20 | A. Objections

21 Any Settlement Class Member who intends to object to the fairness of the
22 Settlement must do so no later than November 8, 2013. In order to object, the
23 Settlement Class Member must file with the Court, and provide a copy to Class
24 Counsel and The Mill and Yurcor's Counsel a document that includes the
25 following: (a) the name, address, telephone number and e-mail address of the
26 Person objecting and, if represented by counsel, of his/her counsel; (b) specifically
27 and in writing, all objections; (c) whether he/she intends to appear at the Final
28 Approval Hearing, either with or without counsel; and (d) if not included on

1 Exhibit 2 or if the amounts on Exhibit 2 are believed by him/her to be incorrect, a
2 statement explaining the basis of his/her membership in the Class and/or for the
3 correction as to the amount due him/her. Any Settlement Class Member who fails
4 to file and serve timely a written objection and notice of his or her intent to appear
5 at the Final Approval Hearing pursuant to this Section shall not waive any
6 objection, shall be permitted to object to the approval of the Settlement at the Final
7 Approval Hearing and shall be foreclosed from seeking any review of the
8 Settlement or the terms of the Agreement by appeal or other means, unless given
9 special permission by the Court.

10 **B. Requests For Exclusion**

11 1. Any member of the Class may request to be excluded (or "opt
12 out") from the Settlement Class. A Settlement Class Member who wishes to opt
13 out of the Settlement Class must do so no later than November 8, 2013. In order to
14 opt out, a Settlement Class Member must complete and send to the Claims
15 Administrator a Request For Exclusion that is post-marked no later than the Opt
16 Out and Objection Date. The Request for Exclusion must be personally signed by
17 the Settlement Class Member requesting exclusion and contain a statement that
18 indicates a desire to be excluded from the Settlement Class. So-called "mass" or
19 "class" opt-outs shall not be allowed. Plaintiffs shall not opt-out.

20 2. Except for those Settlement Class Members who timely and
21 properly file a Request for Exclusion, all other Settlement Class Members will be
22 deemed to be Settlement Class Members for all purposes under the Agreement, and
23 upon the effective Date, will be bound by its terms, regardless of whether they file
24 a Claim or receive any monetary relief.

25 3. Any Settlement Class Member who properly requests to be
26 excluded from the Settlement Class shall not: (a) be bound by any orders or
27 judgments entered in the Action relating to the Settlement; (b) be entitled to relief

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1 under, or be affected by, the Agreement; (c) gain any rights by virtue of the
2 Agreement; or (d) be entitled to object to any aspect of the Settlement.

3 4. If more than 5% of the Settlement Class Members timely opts-
4 out, either The Mill or Yurcor may withdraw from this settlement, in which case
5 the Agreement will be deemed terminated as provided in Section 11 of this
6 Agreement. Any such right must be exercised within 14 days after the time for
7 opting out has expired and shall be communicated in writing to each of the other
8 parties.

9 **6. RELEASES**

10 The Agreement shall be the sole and exclusive remedy for any and all
11 Released Claims of all Releasing Parties against all Released Parties. No Released
12 Party shall be subject to liability or expense of any kind to any Releasing Party
13 with respect to any Released Claim. Upon entry of the Final Judgment and Order
14 Approving Settlement, each and every Releasing Party shall be permanently barred
15 and enjoined from initiating, asserting, and/or prosecuting any Released Claim
16 against any Released Party in any court or any forum.

17 1. The following terms have the meanings set forth herein:

18 a. "Released Claim" means any individual, class, representative,
19 group or collective claim, liability, right, demand, suit, matter, obligation, damage,
20 loss, action or cause of action, of every kind and description that a Releasing Party
21 has or may have, including assigned claims, whether known or unknown (as
22 defined below), asserted or unasserted, latent or patent, that is, has been, could
23 reasonably have been or in the future might reasonably be asserted under any body
24 of law by the Releasing Party either in a court or any other judicial or other forum,
25 regardless of legal theory or relief claimed, and regardless of the type or relief or
26 amount of damages claimed, against any of the Released parties arising from, or in
27 any way relating to, the Claims asserted in the Complaint (and including, but not
28 limited to, claimed violations of any of the statutory provisions cited in the

1 Complaint) covering the period up to and including the date of Preliminary
2 Approval. For purposes of this Agreement, the term "Unknown Claim" means any
3 and all Released Claims that any Party, or anyone acting on behalf of or in their
4 interest, does not know or suspect to exist against any of the Released Parties
5 which, if known, might have affected his or her or its decision regarding the
6 settlement of this Action. The Parties further acknowledge that they may hereafter
7 discovery facts in addition to or different from those that they now know or believe
8 to be true concerning the subject matter of this release, but nevertheless fully,
9 finally and forever settle and release all Released Claims, known or unknown,
10 suspected or unsuspected, contingent or non-contingent, which now exist, may
11 hereafter exist, or heretofore have existed based upon actions, conduct, events or
12 transactions occurring on or before the date of this Agreement, without regard to
13 subsequent discovery or the existence of such different or additional facts
14 concerning each of the Released Parties.

15 b. "Released Party" means The Mill, Yurcor, and each of their
16 affiliated companies, affiliates, officers, directors, representatives and agents.

17 c. "Releasing Party" means each Plaintiff, each Settlement Class
18 Member and any Person claiming by or through each Settlement Class Member,
19 including but not limited to, spouses, children, wards, heirs, devisees, legatees,
20 incites, employees, associates, co-owners, attorneys, agents, administrators,
21 predecessors, successors, assignees, representatives of any kind, shareholders,
22 partners, directors, or affiliates.

23 2. Upon entry of the Final Judgment and Order Approving Settlement,
24 each Releasing Party shall be deemed to have released and forever discharged each
25 Released Party of and from any and all liability for any and all Released Claims.

26 3. With respect to any and all Released Claims, and upon entry of the
27 Final Judgment and Order Approving Settlement without further action, for good
28 and valuable consideration, the Parties, including Plaintiffs, on behalf of

1 themselves and the Settlement Class and as the representatives of the Settlement
2 Class, shall expressly and by operation of the final Judgment and Order Approving
3 Settlement shall, to the fullest extent permitted by law, fully, finally, and forever
4 expressly waived and relinquished with respect to the Released Claims, any and all
5 provisions, rights, and benefits of Section 1542 of the California *Civil Code* and
6 any and all similar provisions, rights, and benefits conferred by any law of any
7 state or territory of the United States or principle of common law that is similar,
8 comparable, or equivalent to Section 1542 of the California *Civil Code*, which
9 provides:

10 “A general release does not extend to claims which the
11 creditor does not know or suspect to exist in his or her
12 favor at the time of executing the release, which if known
by him or her must have materially affected his or her
settlement with the debtor.”

13 4. Except as to the rights and obligations provided for under this
14 Agreement, each Party and its attorneys and all of their respective past, present and
15 future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and
16 agents, including their respective past, present and future predecessors successors,
17 assigns, devisees, relatives, heirs, legatees, and agents hereby release and forever
18 discharge the other Parties and their attorneys for any and all charges, complaints,
19 claims, debts, liabilities, demands, obligations, costs, expenses, actions and causes
20 of action of every nature, character, and description, whether known or unknown,
21 asserted or unasserted, suspected or unsuspected, fixed or contingent, which each
22 Party may now have, own or hold or which Defendants at any time may have, own
23 or hold, against the Plaintiffs, their attorneys by reason of any matter, cause or
24 thing whatsoever occurred, done, omitted or suffered from the beginning of time to
25 the Preliminary Approval Date.

26 5. The Parties agree that the Court shall retain exclusive and continuing
27 jurisdiction over the Parties, Settlement Class Members, and the claims
28

1 Administrator to interpret and enforce the terms, conditions, and obligations under
2 the Agreement.

3 **7. COUNSEL FEES AND COSTS**

4 Class Counsel agree to make, and The Mill and Yurcor agree not to oppose,
5 an application for the award of Attorneys' Fees in this Action in an amount not to
6 exceed twenty-five percent (25%) of the Settlement Amount plus expenses to be
7 paid from the Settlement Amount. Class Counsel shall not request any additional
8 fees or costs above this amount. Class Counsel's initial motion and brief
9 supporting its fee request shall be filed with the Court at least six weeks before the
10 Final Approval Hearing (or a date at least 10 days before the deadline for Class
11 Members to object and opt out). The Mill and Yurcor also agree not to oppose an
12 application by Class Counsel for case contribution awards of up to a total of
13 \$6,000.00 from the Settlement Amount for the four named Plaintiffs to be divided
14 equally among them in addition to the Attorneys' Fees and Expenses awarded to
15 Class Counsel in this Action. If the Court approves the motion, such fees,
16 expenses and case contribution awards will be paid by The Mill and Yurcor to
17 Class Counsel (with 4 separate individual checks for the case contribution awards)
18 within ten (10) days after the Effective Date. If the Court reduces the amount of
19 fees, expenses and/or case contribution awards, The Mill and Yurcor shall pay the
20 reduced amount within ten (10) days of the Effective Date. Any thus remaining
21 balance of the Settlement Amount resulting therefrom will then be distributed
22 evenly amongst the entire class per Class Member and included in the waiting-time
23 penalty checks issued by Defendants to Class Members. The Parties will file with
24 the Court an Exhibit with the list of final waiting-time penalty payments to Class
25 Members to the extent they are not identical in amount to the gross wage portion of
26 the payments.

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1 **8. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT**

2 1. This Agreement is subject to and conditioned upon the issuance by the
3 Court of the Final Judgment and Order Approving Settlement that finally certifies
4 the Settlement Class for the purposes of settlement only, grants final approval of
5 the Settlement, and provides the relief specified herein, which relief shall be
6 subject to the terms and conditions of the Agreement and the Parties' performance
7 of their continuing rights and obligations hereunder. Such Final Judgment and
8 Order Approving Settlement shall be in substantially the form attached hereto as
9 Exhibit 1 and shall:

10 a. Confirm the final certification, for settlement purposes only, of
11 the Settlement Class;

12 b. Confirm the compliance of the Settlement Class with all
13 requirements of Rule 23, including confirmation of the adequacy of the
14 representation of the Class Representative as representative of the Settlement
15 Class;

16 c. Confirm that the issuance of Notice complied in all respects
17 with the requirements of due process and Rule 23 by providing due, adequate, and
18 sufficient notice to the Settlement Class;

19 d. Determine that the Agreement is entered into in good faith, is
20 reasonable, fair and adequate, and is in the best interest of the Settlement Class;

21 e. Dismiss the action with prejudice and without costs to any
22 Party;

23 f. Release each Released Party from the Released Claims that any
24 Releasing Party has, had, or may have in the future, against each Released Party
25 and provide that the covenant Not To Sue has been given by each Settlement Class
26 Member in favor of each Released Party and that all Settlement Class Members are
27 bound thereby;

28

1 g. Bar and enjoin all Parties from asserting against any other Party
2 any Released Claim;

3 h. Release each Plaintiff and Settlement Class Members, and their
4 respective attorneys and agents of each of them, each of the foregoing solely in
5 their capacity as such, and the predecessors, successors, heirs and assigns of each
6 of them, from all claims of every nature and description, known and unknown, that
7 any Defendant has had, or may in the future have relating to or arising from the
8 Released Claims, and bar and enjoin all Defendants asserting the same;

9 i. Release each Defendant and their respective present and former
10 parents, subsidiaries, divisions and affiliates, the present and former partners,
11 employees, officers, and directors of each of them, the present and former
12 attorneys, accountants, experts, consultants, insurers and agents of them, and the
13 predecessors, successors, heirs and assigns of each of them from all claims of
14 every nature and description, known and unknown, that any Plaintiff and Class
15 Member has, had or may in the future have relating to or arising from the Released
16 Claims, and bar and enjoin all Plaintiffs and Class Members from asserting the
17 same; and

18 j. Retain the Court's continuing and exclusive jurisdiction over
19 the Parties to the Agreement, including all Settlement Class Members, to construe
20 and enforce the Agreement in accordance with its terms for the mutual benefit of
21 the Parties.

22 **9. REPRESENTATIONS AND WARRANTIES**

23 1. The Mill represents and warrants: (a) that it has the requisite corporate
24 power and authority to execute, deliver and perform the Agreement and to
25 consummate the transactions contemplated hereby; (b) that the execution, delivery
26 and performance of the Agreement and the consummation by it of the actions
27 contemplated herein have been duly authorized by necessary corporate action on
28

1 the part of The Mill; and (c) that the Agreement has been duly and validly executed
2 and delivered by The Mill and constitutes its legal, valid and binding obligation.

3 2. Yurcor represents and warrants: (a) that it has the requisite corporate
4 power and authority to execute, deliver and perform the Agreement and to
5 consummate the transactions contemplated hereby; (b) that the execution, delivery
6 and performance of the Agreement and the consummation by it of the actions
7 contemplated herein have been duly authorized by necessary corporate action on
8 the part of Yurcor; and (c) that the Agreement has been duly and validly executed
9 and delivered by Yurcor and constitutes its legal, valid and binding obligation.

10 3. Plaintiffs represent and warrant that they are entering into the
11 Agreement on behalf of themselves individually and as representatives of the
12 putative Settlement Class Members and the Releasing Parties, of their own free
13 will and without the receipt of any consideration other than what is provided in the
14 Agreement or disclosed to, and authorized by, the Court. Plaintiffs represent and
15 warrant that they have reviewed the terms of the Settlement in consultation with
16 Class Counsel and believe them to be fair and reasonable, and covenants that they
17 will not file a Request for Exclusion from the Settlement Class or object to the
18 Settlement. Class Counsel represents and warrants that they are fully authorized to
19 execute the Agreement on behalf of the Plaintiffs, individually and as
20 representative of the putative Settlement Class Members and Releasing Parties.

21 4. The Parties warrant and represent that no promise, inducement or
22 consideration for the Settlement has been made, except those set forth herein. No
23 consideration, amount or sum paid, accredited, offered or expended by The Mill or
24 Yurcor in its performance of this Agreement and the Settlement constitutes a fine,
25 penalty, punitive damages or other form of assessment for any claim against it.

26 **10. NO ADMISSIONS; NO USE**

27 The Agreement and every stipulation and term contained in it is conditioned
28 upon final approval of the Court and is made for settlement purposes only.

1 Whether or not consummated, this Agreement shall not be: (a) construed as,
2 offered in evidence as, received in evidence as, and/or deemed to be, evidence of a
3 presumption, concession or an admission by Plaintiffs, Defendants, any Settlement
4 Class Member or Releasing or Released Party, of the truth of any fact alleged or
5 the validity of any claim or defense that has been, could have been, or in the future
6 might be asserted in any litigation or the deficiency of any claim or defense that
7 has been, could have been, or in the future might be asserted in any litigation, or of
8 any liability, fault, wrongdoing or otherwise of such Party; or (b) construed as,
9 offered in evidence as, received in evidence as, and/or deemed to be, evidence of a
10 presumption, concession or an admission of any liability, fault or wrongdoing, or
11 in any way referred to for any other reason, by Plaintiffs, Defendants, any
12 Releasing Party or Released Party in the Action or in any other civil, criminal or
13 administrative action or proceeding other than such proceedings as may be
14 necessary to effectuate the provisions of the Agreement.

15 **11. TERMINATION OF THIS AGREEMENT**

16 1. Either Party may terminate this Agreement by providing written
17 notice of any Party given hereto within ten (10) days of written notice to the other
18 Party if any of the following occur:

19 a. The Court does not ultimately enter an order granting
20 Preliminary Approval Order conforming in all material respects to Sections 3(A)
21 and 3(B) herein and Exhibit 4 hereof;

22 b. The Court does not conditionally and finally certify the
23 Settlement Class as defined herein or the Court's order certifying the Settlement
24 Class is reversed, vacated, or modified in any material respect by another Court; or

25 c. The Court does not ultimately enter a Final Judgment and Order
26 Approving Settlement conforming in all material respects to Section 9 herein and
27 Exhibit 1, or if entered, such Final Judgment and Order Approving Settlement is
28 reversed, vacated or modified in any material respect by another Court.

1 2. Either Defendant may terminate this Agreement under the
2 circumstances described in Section 5(B).

3 3. In the event of termination, the terminating Party shall use its best
4 efforts to cause the Claims Administrator to post information regarding the
5 termination on the website established for the Settlement and to e-mail such
6 information to those Settlement Class Members who provided an e-mail address to
7 the Claims Administrator. It is expressly agreed that neither the failure of the
8 Court to award Attorneys' Fees and Expenses to Class Counsel, nor the amount of
9 such Attorneys' Fees and Expenses or Incentive Awards that may be finally
10 determined and awarded, shall provide a basis for termination of this Agreement.

11 4. In the event that this Agreement terminates for any reason, all Parties
12 shall be restored to their respective positions as of immediately prior to March 14,
13 2013, the date of execution of the Tentative Agreement executed in mediation,
14 which Tentative Agreement shall then also be deemed terminated. Upon
15 termination, Sections 4(3), 11, 12(2), 12(3), and 13 herein shall survive and be
16 binding on the Parties, but this Agreement and the Tentative Agreement shall
17 otherwise be null and void and the litigation will resume.

18 **12. MISCELLANEOUS PROVISIONS**

19 1. Entire Agreement

20 The Agreement, including all Exhibits hereto, shall constitute the entire
21 Agreement among the Parties with regard to the Settlement and shall supersede
22 any previous agreements, representations, communications and understandings
23 among the Parties with respect to the subject matter of the Settlement. The
24 Agreement may not be changed, modified, or amended except in a writing signed
25 by all Parties and, if required, approved by the Court. The Parties contemplate that
26 certain of the Exhibits to the Agreement relating to Class Notice may be modified

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1 by subsequent agreement of The Mill and Yurcor and Class Counsel or by the
2 Court prior to dissemination to the Settlement Class.

3 2. Governing Law

4 The Agreement shall be construed under and governed by the laws of the
5 State of California, applied without regard to laws applicable to choice of law.

6 3. Execution in Counterparts

7 The Agreement may be executed by the Parties in one or more counterparts,
8 each of which shall be deemed an original but all of which together shall constitute
9 one and the same instrument. Facsimile signatures or signatures sent by e-mail
10 shall be treated as original signatures and shall be binding.

11 4. Notices

12 Any notice, instruction, application for Court approval or application for
13 Court orders sought in connection with the Settlement and the Agreement or other
14 document to be given by any Party to any other Party shall be in writing and
15 delivered personally, by UPS or Federal Express next business day delivery, or
16 sent by registered or certified mail, postage prepaid, if to The Mill and Yurcor to
17 the attention of The Mill and Yurcor's Counsel, and if to Settlement Class
18 Members to the attention of Class Counsel on their behalf.

19 All notices to the Parties or counsel required by the Agreement shall be
20 made in writing and communicated as set forth above to the following addresses:

21 a. If to Plaintiffs or Class Counsel:

22 STUART LIBICKI (SBN 57626)
23 SCHWARTZ, STEINSAPIR,
24 DOHRMANN & SOMMERS LLP
25 6300 Wilshire Boulevard, Suite 2000
26 Los Angeles, California 90048-5268

27 //

28 //

29 //

30 //

1 b. If to The Mill's Counsel:

2 MICHELE J. BEILKE
3 JULIA YENHA TRANKIEM
4 REED SMITH LLP
5 355 South Grand Avenue, Suite 2900
6 Los Angeles, CA 90071

7 c. If to Yurcor's Counsel:

8 GREGORY V. MERSOL
9 BAKER & HOSTETLER LLP
10 PNC Center
11 1900 East 9th Street, Suite 3200
12 Cleveland, OH 44114-3482

13 5. Good Faith

14 The Parties agree that they will act in good faith and will not engage in any
15 conduct that will or may frustrate the purpose of this Agreement, including but not
16 limited to, soliciting or otherwise encouraging, directly or indirectly, class
17 members to request exclusion from the Class, object to the Settlement or appeal the
18 Final Judgment. The Parties further agree, subject to Court approval, to reasonable
19 extensions of time to carry out any of the provisions of the Agreement.

20 6. Protective Orders

21 All orders, agreements and designations regarding the confidentiality of
22 documents and information ("Protective Orders") remain in effect, and all Parties
23 and counsel remain bound to comply with the Protective Orders. Within thirty
24 (30) days of the Effective Date, the Parties will certify in writing that they have
25 used their best efforts to destroy or return to the producing party all documents and
26 information produced in the Actions that were designated as "Confidential" or
27 "Mediation Only" pursuant to the Protective Order, previously entered in the
28 Action. Notwithstanding this provision, Defense Counsel and Class Counsel may
 retain copies of all documents submitted to the Court, but those documents must be
 kept confidential and will continue to be subject to the Protective Order.

1 7. Press Release

2 The Parties will jointly prepare a press release regarding resolution of the
3 litigation which will constitute the Parties' exclusive statement concerning the
4 matter. Otherwise, this Settlement Agreement and its terms shall remain
5 confidential until the Parties obtain preliminary approval from the Court.

6 8. Binding on Successors

7 The Agreement shall be binding upon, and inure to the benefit of, the heirs,
8 successors, assigns, executors and legal representatives of the Parties to the
9 Agreement and all Defendants and Released Parties.

10 9. Arm's Length Negotiations

11 The determination of the terms and conditions contained herein of and the
12 drafting of the provisions of this Agreement has been by mutual understanding
13 after negotiation, with consideration by, and participation of, the Parties hereto and
14 their counsel. This Agreement shall not be construed against any Party on the
15 basis that the Party was the drafter or participated in the drafting.

16 10. Waiver

17 The waiver by one Party of any provision or breach of the Agreement shall
18 not be deemed a waiver of any other provision or breach of the Agreement.

19 11. Variance

20 In the event of any variance between the terms of this Agreement and any of
21 the Exhibits hereto, the terms of this Agreement shall control and supersede the
22 Exhibit(s).

23 12. Exhibits

24 All exhibits to this Agreement are material and integral parts hereof, and are
25 incorporated by reference as if fully rewritten herein.

26 13. Taxes

27 No Party or their counsel has provided any representation or guarantee
28 respecting the tax consequences of the Settlement as to any Settlement Class

1 Member. The Class Notice will direct Settlement Class Members to consult their
2 own tax advisors regarding the tax consequences of the Settlement and any tax
3 reporting obligations with respect thereto. Each Settlement Class Member is
4 responsible for his/her tax reporting and other obligations respecting the
5 Settlement, if any.

6 14. Modification in Writing Only

7 This Agreement and any and all parts of it, may be amended, modified,
8 changed or waived only by an express instrument in writing and signed by the
9 Parties. The Parties recognize and agree that all modifications are subject to Court
10 approval.

11 15. Integration

12 This Agreement represents the entire understanding and agreement among
13 the Settling Parties and supersedes all prior proposals, negotiations, agreements,
14 and understandings related to the subject matter of this Agreement. The settling
15 Parties acknowledge, stipulate and agree that no covenant, obligation, condition,
16 representation, warranty, inducement, negotiation or understanding concerning any
17 part or all of the subject matter of this Agreement has been made or relied upon
18 except as set forth expressly herein.

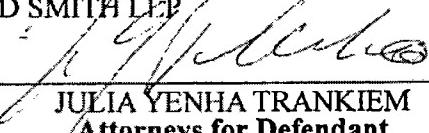
19 IN WITNESS WHEREOF, each of the Parties has caused the Agreement to
20 be executed on its behalf by its duly authorized counsel of record, all as of
21 the day set forth below.

22
23 Dated: July 27, 2013

MICHELE J. BEILKE

JULIA YENHA TRANKIEM

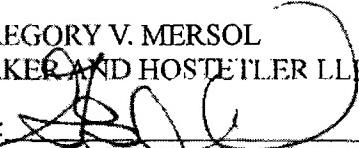
REED SMITH LLP

By: 

JULIA YENHA TRANKIEM
Attorneys for Defendant
The Mill Group, Inc.

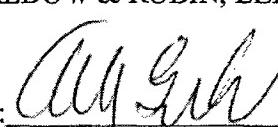
1 Dated: July 15, 2013

GREGORY V. MERSOL
BAKER AND HOSTETLER LLP

By: 
GREGORY V. MERSOL
Attorneys for Defendant
The Churchill Benefit Corp. dba Yurcor

6 Dated: July 26, 2013

7 ARTHUR GREBOW, ESQ.
8 GREBOW & RUBIN, LLP

9 By: 
10 ARTHUR GREBOW

11 WILLIAM T. PAYNE
12 PAMINA EWING
13 FEINSTEIN DOYLE
14 PAYNE & KRAVEC, LLC

15 STUART LIBICKI
16 SCHWARTZ, STEINSAPIR,
17 DOHRMANN & SOMMERS LLP

18 Attorneys for Plaintiffs

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